

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:

Environmental Disposal
Systems, Inc.
Romulus, Michigan

UIC Permit Nos.: MI-163-1W-C007)
MI-163-1W-C008)

) UIC Appeal Nos. 98-1 & 98-2

ORDER DISMISSING MOTION FOR RECONSIDERATION

On November 2, 1998, the Board received a submission titled "Slip Opinion" from Sandra Yerman, a petitioner in the above-captioned matter. In this submission, Ms. Yerman points to alleged errors in the Board's October 15, 1998 Order Denying Review ("Order"). We will treat this submission as a motion for reconsideration of the Board's Order.

Under 40 C.F.R. § 124.19(g), a motion for reconsideration must be filed - that is received¹ - within ten (10) days after service of a final order. In addition, where a document is served by mail, "three (3) days shall be added to the prescribed time." 40 C.F.R. § 124.20(d). The Board's Final Order in this case was served by mail upon Ms. Yerman on October 15, 1998. The deadline for filing a motion for reconsideration, therefore, was October 28, 1998 (10 days + 3 days). As the motion for

¹See *In re Beckman Production Services*, 5 E.A.D. 10, 15 (EAB 1994).

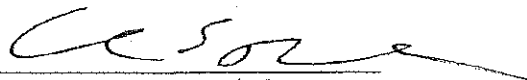
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reconsideration was not received until November 2, 1998, it was not timely filed. Further, this case does not present any special circumstances that would warrant relaxation of the time for filing a motion for reconsideration. See *In re B & B Wrecking and Excavating, Inc.*, 4 E.A.D. 16; 17 (EAB 1992) (time requirements must be followed unless special circumstances warrant relaxation). The motion is therefore dismissed as untimely.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: NOV 4 1998

By: 
Edward E. Reich
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Motion for Reconsideration in the matter of Environmental Systems, Inc., Romulus, Michigan, UIC Appeal Nos. 98-1 & 98-2, were sent to the following persons in the manner indicated:

First Class Mail,
Postage Prepaid:

Sandra Yerman

FOIA

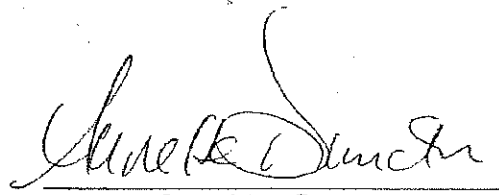
EX.6

Rep. Raymond E. Basham
House of Representatives
State Capitol
Lansing, MI 48913

Steven Murawski
Assistant Regional Counsel
US EPA Region V
77 West Jackson Blvd. (C-14J)
Chicago, IL 60604

William C. Fulkerson
900 Old Kent Building
111 Lyon Street, N.W.
Grand Rapids, MI 49503-2487

Dated: NOV 4 1998


Annette Duncan
Secretary



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF THE
ADMINISTRATOR

November 19, 1998

Sandra K. Yerman

FOIA
EX. 6

Re: *Environmental Disposal Systems, Inc.*, UIC Appeal Nos. 98-1 & 98-2

Dear Ms. Yerman,

On November 2, 1998, the Board received your submission titled "Slip Opinion." The submission pointed to alleged errors in the Board's October 15, 1998 Order Denying Review. As these alleged errors were of a substantive nature rather than typographical or stylistic, the Board treated this submission as a motion for reconsideration. The motion was then dismissed as untimely. See Order Dismissing Motion for Reconsideration (Nov. 4, 1998).

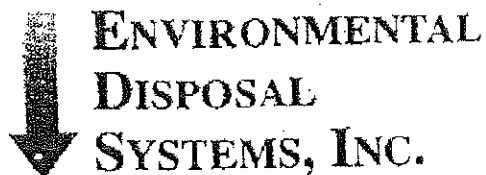
On November 13, 1998, the Board received a submission titled "This is Not a Motion for Reconsideration! Slip Opinion." Except for the title, this submission is identical to the November 2, 1998 submission. This is to notify you that the Board has reviewed this submission and does not believe that any changes to the Board's October 15, 1998 Order are warranted.

Sincerely,

A handwritten signature in dark ink, appearing to read "David R. Heckler".

David R. Heckler
Senior Counsel
Environmental Appeals Board

cc: Steven Murawski
Assistant Regional Counsel
U.S. EPA Region V
77 West Jackson Blvd.
Chicago, Illinois 60604



FAX TRANSMITTAL

199 W. Brown Street • Suite 200 • Birmingham, MI 48009 • Telephone (248) 642-4214 • Facsimile (248) 642-7122

Date: 7-28 Pages: 5

To: DAVE WERBACH

Fax:

Phone:

From: DOUG WICKLUND

Phone:

Message: FOR YOUR INFO.

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WARNER NORCROSS

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:

Environmental Disposal
Systems, Inc.

UIC Appeal Nos. 98-1 & 98-2

ORDER ON MOTION FOR EXPEDITED REVIEW

By motion dated June 30, 1998, Environmental Disposal Systems, Inc. ("EDS") requests that the Environmental Appeals Board "expedite its consideration" of the above-cited UIC appeals. In support of this request, EDS states that the pendency of the petitions is "preventing the processing of EDS's State of Michigan hazardous waste storage and treatment facility RCRA permit application." In addition EDS states that the delay is preventing EDS and its partners from receiving any revenue to recover their investment and could result in a loss of financing.

The Board's practice is to address UIC appeals in cases involving construction of new wells on a priority basis (relative to those appeals where resolution of the appeal is not a prerequisite to construction). Of course, any such priority consideration must be consistent with the Board's obligation to give appropriate consideration to the issues presented to it for resolution. The Board is following this practice in its consideration of these particular appeals and is therefore already undertaking the priority consideration that EDS's motion

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WARNER NORCROSS

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appears to request.

Accordingly, the Board hereby notes its receipt of EDS's June 10, 1998 motion for inclusion in the record of these proceedings. Any change in the various circumstances cited by EDS in its motion should similarly be brought to the Board's attention.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: *July 22, 1998*

By: *Kathie A. Stein*
Kathie A. Stein
Environmental Appeals Judge

Document Title: (6) UIC Appeal Nos. 98-1 & 98-2
7-28-1998 3:57 PM FDS 12486427122
Author: Edward E. Reich, Environmental Appeals Judge
07/27/98 09:18 FAX 616 4 5107

Recipient: Petitioners
Date: July, 22 1998 Page: 8 of 15 - 4
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order on Motion for Expedited Review in the matter of Environmental Disposal Systems, Inc., UIC Appeal Nos. 98-1 & 98-2, were sent to the following persons in the manner indicated:

First Class Mail,
Postage Prepaid:

William C. Fulkerson
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Raymond E. Basham
House of Representatives
State of Michigan
State Capitol
Lansing, MI 48913

Sandra Yerman

FOIA
EX. 6

Dated: JUL 23 1998


Annette Duncan
Secretary

WARNER NORCROSS & JUDD LLP

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WILLIAM C. FULKERSON

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July 22, 1998

Environmental Appeals Board
MC 1103B
U.S. EPA
401 M Street, S.W.
Washington, D.C. 20460

Re: In the Matter of Environmental Disposal Systems, Inc.
Romulus, Michigan Permittee
Appeal Nos. U.I.C. 98-1 and 98-2

Dear Sir/Madam:

Enclosed for filing are an original and five copies of a Response to Petitions for Review and Proof of Service in the above-referenced matter.

Should you have any questions concerning this, please feel free to contact me.
Thank you for your attention to this matter.

Very truly yours,

William C. Fulkerson
William C. Fulkerson

ka

enclosures

c/enc: Raymond E. Basham

Sandra Yuman

Steven Murawski

bc/enc: Douglas F. Wicklund

Lawrence R. Ternan



**ENVIRONMENTAL
DISPOSAL
SYSTEMS, INC.**

FAX TRANSMITTAL

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WARNER NORCROSS

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

**IN THE MATTER OF
ENVIRONMENTAL DISPOSAL
SYSTEMS, INC.
ROMULUS, MICHIGAN
PERMITEE**
Docket No. MI-163-1W-C007
MI-163-1W-C008

**Appeal Numbers
U.I.C. 98-1 and
U.I.C. 98-2**

**MOTION FOR EXPEDITED REVIEW BY ENVIRONMENTAL DISPOSAL
SYSTEMS, INC. IN SUPPORT OF PERMIT NOS.
MI-163-1W-C007 AND MI-163-1W-C008**

Environmental Disposal Systems, Inc., the permit applicant (hereinafter, "EDS") applied to U.S. EPA Region 5 for authority to install and operate two injection wells (Permit Numbers MI-163-1W-C007 and MI-163-1W-C008) on behalf of itself and as Managing Operator of a Michigan joint venture formed for the sole purpose of developing such a project in Romulus, Michigan.

The principal equity and lending partner of the joint venture is the Policemen and Firemen's Retirement System of the City of Detroit, which has invested approximately \$6,600,000 in the joint venture to date.

Petitioner EDS, by and through its attorneys Warner Norcross & Judd LLP, respectfully move the Environmental Appeals Board (hereinafter, the "Board") to expedite

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WARNER NORCROSS

consideration of the petitions for review of the underground injection control permits, U.I.C. appeals 98-1 and 98-2 (hereinafter, collectively, the "Petitions").

INTRODUCTION

This permit proceeding arises under the Safe Drinking Water Act, 42 U.S.C. §6901 et seq. and 42 U.S.C. §300h-3, 40 C.F.R. §144.31, known as the Underground Injection Control (hereinafter, "U.I.C.") program.

The U.I.C. program requires one who intends to inject hazardous waste into a deep injection well to obtain a U.I.C. permit for such activities. See, 42 U.S.C. §300h-3; 40 C.F.R. §144.31. On May 30, 1996, EDS submitted, to the U.S. EPA, a permit application for two U.I.C. permits for the commercial deep well injection of hazardous wastes. On August 21, 1997, Region 5 issued two draft federal Class I commercial hazardous waste underground injection permits to EDS and on March 18, 1998, issued final permits, Nos. MI-163-1W-C007 and MI-163-1W-C008. On April 20, 1998 and April 30, 1998, the Petitions challenging the permits were filed with the Board pursuant to 40 C.F.R. §124.19.

The appeal of EDS's U.I.C. permits is preventing the processing of EDS's State of Michigan hazardous waste storage and treatment facility RCRA permit application. This permit application process was commenced in January of 1997, however, the State of Michigan has refused to continue processing the application until EDS has obtained U.I.C. well permits.

Once the State of Michigan permit application process recommences, it will take 18 months to complete.

EDS has received or will likely receive all Federal, State, and County permit approvals required to have the State of Michigan process its waste storage and treatment permit application, except for the permits at issue in the Petitions. Additionally, EDS received administrative completeness review approval from the State and appeared to be technically complete until the stay of the U.I.C. permits. The State has stated that the U.I.C. permits are necessary to continue the permit application process.

Furthermore, EDS performed exhaustive studies to reach the regulatory approval level necessary for the State to begin its review of EDS's waste storage and treatment permit application. These studies have met the requirements of the U.S. EPA's underground injection control group, the County of Wayne's air permit department, the State of Michigan's Underground and Above Ground Storage Tank Division, and have received the conditional approval of the State's Geological Survey Division. This process has taken approximately three years to date.

**THE BOARD SHOULD GRANT PETITIONER'S MOTION FOR EXPEDITED
CONSIDERATION**

The Petitions have failed to demonstrate that U.S. EPA Region 5 clearly erred in issuing the final U.I.C. permits or that there is an important policy consideration which the

Board should, in its discretion, review. The Petitions, therefore, have not satisfied the standard of review articulated in 40 C.F.R. §124.19. Therefore, the Permittee respectfully requests that the Board grant its motion for expedited consideration based on the following unusual and compelling circumstances:

1. EDS originally filed its application for U.I.C. permits with the U.S. EPA in May of 1996 but has yet to receive its permits.
2. The Petitions are preventing the continuation of the State of Michigan's review of EDS's hazardous waste storage and treatment facility RCRA permit application. This State permit application process was commenced in January of 1997 but has been stopped and cannot be continued until these appeals are resolved. The permit application process will take an additional 18 months to complete once it recommences.
3. The delay resulting from the Petitions is preventing EDS and the joint venture from receiving any revenue to recover their investment.
4. EDS and the joint venture are incurring approximately \$75,000 per month in expenses to continue development of the well project. The two U.I.C. wells which are subject to the Petitions are the Joint Venture's only potential source of revenue, thus, the delay resulting from the Petitions is preventing it from receiving any revenue to recover its expenses. The well project's funding is subject to periodic review of its status and progress by the Policemen and Firemen's Retirement System of the City of Detroit. The next scheduled review is as of

December 31, 1998. The uncertainty caused by the stay of the permits (and consequential suspension of the state permitting process) could cause the Project's partner to question the viability of the Project and refuse further funding. Continued delay could, therefore, result in the Joint Venture's dissolution, or seriously impact its ability to gain continued financing.

5. Continued delay resulting from the Petitions could cause EDS to lose existing permits which have expiration dates.

6. The proposed injection well facility will provide the Romulus, Michigan area and southeastern Michigan with the most protective means of wastewater disposal available.

WHEREFORE, Petitioner moves the Environmental Appeals Board for expedited consideration of U.I.C. appeals 98-1 and 98-2.

Dated: June 30, 1998

WARNER NORCROSS & JUDD LLP

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